IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 32 OF 2006.

Shri Amardeep G. Madkaikar,
Major, married, Indian National,
Self-employed, r/o H. No. 8,
Near Navadurga Temple,
Madkaim, Ponda, Goa. .... Petitioner.

Versus

1. State of Goa,
   Through the Secretary (IWT),
   Government of Goa,
   Having office at Secretariat,
   Panaji, Goa.

2. The Captain of Ports,
   Department of Captain of Ports,
   Government of Goa, Panaji, Goa.

3. The Captain of Ports,
   River Navigation Department,
   Government of Goa, Panaji, Goa.

4. The Senior Workshop
   Superintendent/Head of
   Office, River Navigation Department,
   Government of Goa, Panaji, Goa. .... Respondents.

Shri Arun Bras de Sa, Advocate for the Petitioner.

Ms. W. Coutinho, Government Advocate for the Respondents.

CORAM: A. P. LAVANDE, J.

DATE: 10th MARCH, 2006.

ORAL JUDGMENT:

Rule. Mrs. Coutinho, learned Government Advocate waives notice on behalf of the respondents. By consent heard forthwith.

2. By this petition, the petitioner who is the plaintiff in Special Civil Suit No. 315/04 pending before the IInd Adhoc Addl. District Judge, Panaji assails the Order dated 13th September, 2005 by which an application filed by the petitioner in August, 2005 for framing of two additional issues has been rejected. The petitioner filed the above referred suit claiming refund of the amount paid to the respondents with interest as well as compensation. As per the averments made by the petitioner in his plaint, his tender was accepted by the respondents and there was a legally valid and binding contract between the petitioner and the respondents and further that the respondents had terminated the contract and it was not rejection of the tender as contended by the respondents. On the basis of the pleadings in paragraphs 12 and 13, the petitioner sought framing of the following two additional issues :-

i) Whether the Plaintiff proves that consequent to the acceptance of his tender, there existed a legally valid and binding contract

between the Plaintiff and the Defendant ?

ii) Whether the Plaintiff proves that what has been terminated by the Defendant is a contract and not the rejection of the tender ?

3. The learned trial Court by the impugned order, dismissed the application holding that since there was no written agreement executed between the plaintiff and the defendants, the question of framing additional issues did not arise. Mr. D'Sa, the learned counsel appearing for the petitioner, submits that on the basis of the pleadings in paragraphs 12 and 13 which have been denied by the respondents, the said two additional issues do arise in the present matter. A bare reading of paragraphs 12 and 13 of the plaint disclose that the said two issues do arise in the present case in the light of the pleadings of the respondents who are defendants before the trial Court. Therefore, in my opinion, the trial Court was not right in dismissing the application filed by the petitioner for framing of additional issues. In my opinion the trial Court has exercised jurisdiction illegally and therefore interference is warranted in exercise of writ jurisdiction under Art. 227 of the Constitution of India. In my opinion, the trial Court ought to have framed the additional issues as

mentioned in paragraph 5 of the application filed by the petitioner. I am told that the evidence of the plaintiff is over. Mr. D'Sa, learned counsel submits that the plaintiff does desire to lead any further evidence on the said two issues. Hence, no prejudice would be caused to the respondents.

4. In the light of the above discussion, the Writ Petition is allowed. The Trial Court is directed to frame two additional issues mentioned in paragraph 5 of the petitioner's application and proceed with the matter. Needless to mention that the plaintiff will not be permitted to lead further evidence in view of the statement made by Shri D'Sa, learned counsel appearing for the petitioner after framing of the additional issues.

5. The petition is disposed of in the aforesaid terms. No order as to costs.

A. P. LAVANDE, J.

sl.